

**Frank V. Carlow and Michael Carlow, d/b/a Carlow's Ltd. and Service Employees International Union, Local 585, AFL-CIO.** Cases 6-CA-15135, 6-CA-17735, and 6-CA-18008

January 22, 1997

# SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND HIGGINS

On May 15, 1995, Administrative Law Judge Benjamin Schlesinger issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions only to the extent consistent with this Supplemental Decision and Order.

## I. BACKGROUND

On March 4, 1983, the Board issued a Decision and Order<sup>2</sup> directing Frank V. Carlow and Michael Carlow, d/b/a Carlow's Ltd., the Respondents, inter alia, to bargain, upon request, with the Service Employees International Union, Local 585, AFL-CIO (the Union). The United States Court of Appeals for the Third Circuit enforced the Board's Order in its entirety on June 15, 1984.<sup>3</sup> The Union subsequently filed charges alleging a refusal to provide information and a refusal to bargain in good faith. The General Counsel sought and obtained Board authorization to initiate contempt proceedings against the Respondents. On July 18, 1988, the United States Court of Appeals for the Third Circuit found the Respondents in civil contempt<sup>4</sup> and ordered the Respondents, inter alia, to comply fully with the June 1984 order. Because a controversy arose over the amount due under the terms of the orders of the Board and the Third Circuit Court of Appeals, the Acting Regional Director for Region 6 issued a Backpay Specification and Notice of Hearing on April 7, 1993. On September 29, 1994, the Board issued a Supple-

mental Decision and Order<sup>5</sup> granting summary judgment, regarding most of the issues raised in the backpay specification, against the Respondents. The Board remanded the case for a hearing on two issues: the employee status of discriminatee Raymond Smitley, and the entitlement of all of the discriminatees to sick leave.

The judge found, and we agree, that the discriminatees are entitled to sick leave payment. However, as explained below, we find merit in certain of the General Counsel's exceptions. Based on our findings, we have recalculated several of the discriminatees' sick leave earnings.

## II. THE GENERAL COUNSEL'S EXCEPTIONS

The General Counsel disagrees with several of the judge's calculations based on several "principles" which, the General Counsel argues, the judge should have applied. We agree that the judge should have applied the three principles discussed below.<sup>6</sup>

<sup>5</sup> 315 NLRB 27.

<sup>6</sup> We do not find merit in the General Counsel's exceptions that the judge should have applied either the "fiscal year" or "sick day" principles. Under the "fiscal year" principle, the General Counsel argues that the discriminatees are entitled to 15 days of sick leave per fiscal year and that, because there is no contractual language limiting the number of sick days that may be taken at one time or limiting the number of sick days that may be taken per quarter, the judge erred by apportioning the discriminatees' sick days on a quarterly basis. We disagree. First, the judge followed standard backpay procedures by calculating the amount owed on a quarterly basis. Moreover, we find nothing in the parties' collective-bargaining agreement to support the General Counsel's assertion that all sick days are accrued as of the first day of the fiscal year.

Further, we disagree with the General Counsel's use of the "sick day" principle, in which all days noted under the "Days Off, but not Paid" column in the Respondent's exhibits are considered as unpaid sick days and compensated as such. In the documents relied on by the General Counsel, there is already a column clearly marked "Sick Days Taken," and the General Counsel has not established that the notations in the "Days Off, But not Paid" column refer to the same compensable sick leave, rather than, as the heading of the column and the notations themselves appear to indicate, days off for various purposes for which no pay is due. We similarly disagree with our partially dissenting colleague who would include as compensable those days recorded in the "Days Off, But not Paid" column with the notations "sick" or "ill." There is no justification in the record for treating these days in the same manner as those listed in the "Sick Days Taken" column, especially since all other notations in the "Days Off, But not Paid" column, including disciplinary days, clearly reflect uncompensated time off.

Contrary to her colleagues, Member Browning finds partial merit in the General Counsel's exception regarding the "sick day" principle. The document relied on by the General Counsel was created by the Respondent, and includes a column listed as "Sick Days Taken" and a column listed as "Days Off, But Not Paid." Member Browning finds merit in the General Counsel's exception to the extent that it seeks backpay based on entries in the "Days Off, But Not Paid" column which are accompanied by specific notations that the days recorded were for employees who were "sick" or "ill." This exhibit lists a total of 21 such workdays for which the employees uncontrovertedly have not yet been compensated, and which the majority has not included in the backpay award. I find that the Gen-

<sup>1</sup> In the absence of exceptions, we adopt the judge's finding that discriminatee Raymond Smitley is an employee and is entitled to the backpay and other benefits as set forth herein. Moreover, we note that the General Counsel has not excepted to the judge's findings with regard to discriminatees Gerald Bartok, John Gallagher, Michael Mateosky, Dale Nice, Robert Risha, and John Cummings, and we shall adopt those findings. Finally, we adopt the judge's findings with regard to the following discriminatees: Michael Andrews, Charles Churby, Edgar Fazenbaker, Joseph Gulino, Samuel Gulino, and Thomas LaClair.

<sup>2</sup> 266 NLRB 305.

<sup>3</sup> *NLRB v. Carlow's Ltd.*, 738 F.2d 423 (3d Cir. 1984).

<sup>4</sup> *NLRB v. Carlow's Ltd.*, No. 86-3711.

## A. "Full Pay Principle"

We agree with the General Counsel that under article XVI, section 1 and section 3, of the parties' collective-bargaining agreement,<sup>7</sup> the employees are entitled to full reimbursement of salary when on sick leave. The only provision for payment of half-pay is when the employee has accumulated 45 days of sick leave. Thus, the judge erred by computing all sick leave, whether actually taken or accrued, at one-half pay. We shall recalculate, where applicable, at 100 percent of full pay for all sick days actually taken and for which the discriminatees were not reimbursed.

## B. "\$3.40-an-Hour Principle"

Under the collective-bargaining agreement, certain employees are entitled to a wage increase from \$3.35 an hour to \$3.40 an hour. The judge failed to make this adjustment for certain of the discriminatees who qualified and we shall do so where applicable.

## C. "Respondent's Admission Principle"

The judge concluded that he would adopt any amounts the Respondents admitted owing. The judge, however, was inconsistent in his application of this principle, and we will correct this where applicable.

eral Counsel has met the initial burden of establishing gross backpay amounts with respect to contractual sick leave backpay owed by showing that the employees have not been compensated for these days. The majority does not dispute that these days off remain uncompensated, and they do not rely on any contractually based argument to support their conclusion that no backpay is due for these days. Instead, the majority speculates that merely because the Respondent has developed two sets of columns for reporting sick days taken off (at a time when it was disregarding its contractual obligations), there must be a basis for this distinction which affects the Respondent's backpay liability. Just what that basis is, the majority is unable to state. I would not find that such speculation provides an affirmative defense for limiting the backpay award otherwise shown owing.

<sup>7</sup> Art. XVI, secs. 1 and 3, of the parties' collective-bargaining agreement provide, in pertinent part:

Section 1. In any fiscal year whenever an Employee is prevented by illness from following his or her occupation, The Employee [sic] shall pay to said Employee for each day of absence the full salary to which the Employee may be entitled as if said Employee were actually engaged in the performance of duty for a period of fifteen (15) days. Such leave shall be cumulative from year to year to a maximum of forty-five (45) days, and the Employee is permitted to use all of his accumulated sick leave in any one year if necessary.

Section 3. At the end of each calendar year, each Employee shall be notified as to accrued days of sick leave. When an employee has reached the maximum accumulated days of forty-five (45), each year thereafter, within sixty (60) days upon request, the employee shall be paid one-half (1/2) of all supplementary sick benefits earned in that year.

## III. THE DISCRIMINATEES

A. *Walter Baird*

The judge found that Baird is not owed any pay for sick leave. We agree with the General Counsel that he is entitled to \$27.20. The Respondents admitted that Baird is due \$26.80 for sick leave in 1988. However, this amount was improperly calculated at \$3.35 an hour rather than \$3.40 an hour. Therefore, we conclude that Baird is entitled to \$27.20 in sick leave.

B. *Ronald Durant*

The judge found that Durant was entitled to \$1,160.25. The General Counsel contends that the proper amount should be \$1386. We conclude that Durant is entitled to \$1,202.25. We agree with all the judge's calculations except that we have added \$42.00 for one sick day taken in 1985 for which Durant was not paid.

C. *James Pav*

The judge calculated Pav's sick pay to be \$904.75.<sup>8</sup> The General Counsel claims that he is owed \$1020. We find Pav is owed \$967.75. The judge computed Pav's unused sick days at \$3.35 an hour. Using \$3.40 an hour, we have recalculated Pav's unpaid sick leave and find that he is owed \$967.50.

D. *Gary Shipley*

The judge found that Shipley was owed \$997.50 in unpaid sick leave. The General Counsel argues that he is owed \$1064. We find that Shipley is entitled to \$1,011.50 based on the following. The judge and General Counsel agree that Shipley is owed \$210 each for both 1984 and 1985. We agree with the General Counsel that, based on the "Respondent's admission" principle, Shipley is entitled to \$182 for 1986 and \$252 for 1987. We agree with the judge that the Respondent owes Shipley \$157.50 for 1988. Therefore, we find the total amount for unpaid sick leave due to discriminatee Shipley is \$1,011.50.

E. *Albert Smalley*

The judge found that Smalley is entitled to \$329.<sup>9</sup> In its exceptions, the General Counsel maintains that Smalley is entitled to \$332.50. We agree that the amount owed is \$329 based on the following. The Respondent admits that it owes Smalley \$168 for 1984 and \$112 for 1985. We agree with the judge's analysis regarding the amount of \$49 due in 1986. Therefore,

<sup>8</sup> We note that while the judge concluded that Pav is entitled to \$904.75, the amounts set forth in his supplemental decision actually total \$954.75.

<sup>9</sup> Although the judge concluded that Smalley is entitled to \$329, the amounts listed by the judge actually add up to \$385.

although part of our analysis is different from the judge's, we find that Smalley is owed \$329.

#### F. Raymond Smitley

The judge found that Smitley is owed \$1,653.50 in sick leave pay. In his exceptions, the General Counsel argues that Smitley is entitled to \$2,466.50. We conclude that Smitley is owed \$2,152.50 based on the following. For 1984, the Respondent admits it owes him \$520, and we will award him that amount. We agree with the judge's analysis for 1985 that Smitley is owed \$253.50. The Respondent admits to owing Smitley \$644 for 1986, and in view of the Respondent's admission, we will award that amount. We agree with the judge's analysis for the years 1987 and 1988 and award discriminatee Smitley \$420 and \$315 respectively for those years. We therefore find Smitley is owed \$2,152.50 in unpaid sick leave.

#### F. John Thomas

The judge concluded that discriminatee Thomas is owed \$234.50 in sick leave benefits. The General Counsel argues that he is entitled to \$448.80. We conclude Thomas should receive \$236.00. The Respondents concede that Thomas is due \$134 for 1984. We find that based on \$3.40 an hour, Thomas is owed \$136 for 1984. We agree with the judge's 1985 analysis, but have recalculated the benefits due at \$3.40 an hour and find that Thomas is due \$102 for 1985. Therefore, Thomas' total sick pay due is \$236.

#### ORDER

The National Labor Relations Board orders that the Respondents, Frank V. Carlow and Michael Carlow, d/b/a Carlow's Ltd., Uniontown, Pennsylvania, its officers, agents, successors, and assigns, shall pay sick leave to the individuals as named below, and holiday and vacation pay to Raymond Smitley, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws:

Walter Baird	\$27.20
Charles Churby	1,131.00
John Cummings	196.00
Ronald Durant	1,202.25
Joseph Gulino	42.00
Samuel Gulino	1,696.50
Thomas LeClair	668.00
James Pav	967.50
Gary Shipley	1,011.50
Albert Smalley	329.00
Raymond Smitley	2,152.50
John Thomas	236.00
Raymond Smitley	712.00

(holiday and vacation pay)

TOTAL \$10,371.45

IT IS FURTHER ORDERED that the allegations of the backpay specification of sick leave pay due to Michael Andrews, Gerald Bartok, Edgar Fazzenbaker, John Gallagher, Michael Mateosky, Dale Nice, and Robert Risha be dismissed.

Leone P. Paradise, Esq., for the General Counsel.

Phillip S. Simon, Esq., of Pittsburgh, Pennsylvania, for the Respondents.

Rosemary Trump, of Pittsburgh, Pennsylvania, for the Charging Party.

#### SUPPLEMENTAL DECISION

##### FINDINGS OF FACT

BENJAMIN SCHLESINGER, Administrative Law Judge. On September 29, 1994, the National Labor Relations Board issued a Supplemental Decision and Order (315 NLRB 27), granting summary judgment regarding most of the issues raised in the backpay specifications issued against Respondents Frank V. Carlow and Michael Carlow, d/b/a Carlow's Ltd.<sup>1</sup> The Board, however, remanded for hearing two issues: first, the employee status of discriminatee Raymond Smitley, who Respondents alleged was "considered in management," and, second, the entitlement of all the discriminatees to sick leave. This decision deals only with those issues.<sup>2</sup>

There is not an iota of evidence in this record that Smitley is anything but an employee, a painter. The Respondents called no witnesses, and Smitley testified that he possessed and exercised no supervisory powers. He was paid an hourly wage and followed the directions of his supervisors. He received all the benefits of all the other employees and was listed as an employee in at least one document supplied to the Service Employees International Union, Local 585, AFL-CIO by the Respondents during the course of collective bargaining, just as all those persons listed who Respondents have not contested as employees. There is nothing to indicate that he exercised any management functions or even was considered by anyone as a member of management. He served as a member of the Union's negotiating committee, and the Respondents never objected to his participation because he was a member of management. Accordingly, I conclude that Smitley is an employee and entitled to the backpay and other benefits set forth in the specifications, except as set forth here.

The Respondents alleged in their answer to the specifications' claim that sick leave benefits were due to the discriminatees, as follows:

The sick leave claim for all employees should not be assessed against the Respondent because no employee has met the obligation of Article XVI, Section 3 which states in particular "when an employee has reached the maximum accumulated days of forty-five (45), each

<sup>1</sup> The underlying Board decision is reported at 266 NLRB 305 (1983), enf'd. 738 F.2d 423 (3d Cir. 1984).

<sup>2</sup> The specifications issued on April 7, 1993; and the hearing was held in Pittsburgh, Pennsylvania, on April 4, 1995.

year thereafter, within sixty (60) days *upon request*, the employee shall be paid one-half (1/2) of all supplementary sick benefits earned in that year." It is alleged and averred that no employee ever requested to be paid sick leave benefits, and a strict interpretation of the contract would eliminate any rights thereto. [Emphasis in original.]

The Respondents' answer did not precisely raise as an issue the exact amounts due to each employee. Rather, the answer questioned whether the employees were required to claim their sick leave benefits before being entitled to them. But the Respondents offered no evidence on the point at the hearing, and the General Counsel contends, with great appeal, that the Respondents denied that they were even bound under a collective-bargaining agreement, so that it would have been futile for the employees to make their claim for benefits. It was the Board and the United States court of appeals that told the Respondents that they were obligated to bargain collectively with the Union and comply with the terms of the expired collective-bargaining agreement until they did and reached impasse; and that resulted in this proceeding. Therefore, I conclude that, in the circumstances, the employees were not required to claim what was rightfully theirs under an agreement that the Respondents disavowed. That is particularly appropriate because article XVI, section 3, quoted below, also requires the Respondents to notify each employee of what sick leave they accrued and, only after, did the employees have to request their sick pay. The Respondents made no showing that they complied with this condition precedent. Further, the collective-bargaining agreement does not require that a request be made at a particular time and that the failure to make the request releases the Respondents from their liability. Clearly, the specifications constitute sufficient request for the amounts owed, and the Respondents have paid nothing. I conclude that the Respondents' answer raises no defense to their liability for sick leave pay.

As to the amounts, the counsel for the General Counsel seemed to think that the Board wanted her to present the entire case relating to the amounts due and owing, and she put this matter at issue. Thus, she called witnesses to prove the accuracy of the computations set forth in the specifications. Rosemary Trump, the union president, testified that in July 1988 she engaged in collective bargaining with the Respondents, who were represented by, among others, Attorney Donald LaDove and Office Manager Dana Sanders. During the negotiations Trump offered a list of the amounts due the employees for sick leave, wages, holidays, vacation leave, bereavement leave, and hospitalization benefits under the collective-bargaining agreement. LaDove refused to accept her computations and stated that the Respondents would prepare their own audit of what was owed. He directed Dana Sanders to prepare that information and he provided Trump with that information in the fall of 1988. It shows the number of sick days that various employees would have been entitled to for the relevant backpay period<sup>3</sup> had the Respondents complied with the collective-bargaining agreement, as it was required to under the Board's underlying decision. It also shows the

number of sick days that the employees took and shows the number of "Days Left" General Counsel's Exhibit 5; (G.C. Exh. 5).

Another document, General Counsel's Exhibit 6 (G.C. Exh. 6) is a listing, prepared by Sanders, of the employees, their job descriptions, and their hourly rates by year for purposes of identifying bargaining unit employees during the backpay period. Finally, General Counsel's Exhibit 7 (G.C. Exh. 7), also prepared by Sanders, shows the amounts that the Respondents owed to each individual employee for holiday, sick leave, vacation leave, pension, and union dues by year. To the extent that they set forth dollar amounts, they are properly admissions by the Respondents of what was owed. And the testimony of the Region's compliance supervisor was that these were the figures that were used to prepare the specifications.

That testimony, supported by the General Counsel's brief, is unfortunately far from accurate. The specifications doubled the amounts that the Respondents admitted they owed to many of the alleged discriminatees. The Respondents did not concede that they owed anything to other alleged discriminatees, yet the specifications claim that sick leave benefits were due to them. I find the specifications vastly inflated. The fatal error of the specifications appears to be a total failure by the proponents of the specifications to read or consider article XVI, the sick leave provision of the collective-bargaining agreement, which provides, in relevant part:

*Section 1.* In any fiscal year whenever an Employee is prevented by illness from following his or her occupation, The Employee [sic] shall pay to said Employee for each day of absence the full salary to which the Employee may be entitled as if said Employee were actually engaged in the performance of duty for a period of fifteen (15) days. Such leave shall be cumulative from year to year to a maximum of forty-five (45) days, and the Employee is permitted to use all of his accumulated sick leave in any one year if necessary.

....  
*Section 3.* At the end of each calendar year, each Employee shall be notified as to accrued days of sick leave. When an employee has reached the maximum accumulated days of forty-five (45), each year thereafter, within sixty (60) days upon request, the employee shall be paid *one-half* (1/2) of all supplementary sick benefits earned in that year. [Emphasis added.]

The agreement provides that employees may be sick for 15 days in any year, but still be paid. If they do not use their sick leave, they may accumulate their leave up to a maximum of 45 days. Thereafter, in each year that they do not use their sick leave, they may be paid in cash for *half* of their unused sick leave. Thus, after they have accumulated the maximum of 45 days, they then have 15 sick days which they may use when they are sick, and still be paid. If they do not use them, they are entitled to be paid for those days they have not used, but only a maximum of one-half, or 7-1/2 days' pay. The problem with the specifications is that the Region has charged the Respondents for more than the half that they are obligated to pay. The specifications allow the discriminatees to be paid for every day that they did not

<sup>3</sup> The entire backpay period is June 15, 1984, to July 17, 1988, after which the Respondents complied with the Board's earlier Decision and Order.

work because of sickness, in many cases 15 days' pay, and in some instances even more. In no computation did the compliance supervisor rely on the figures set forth in General Counsel's Exhibits 5 and 7 that they stated they relied on. Many are doubled, and some of the computations have no explanation.

My computations are based on the following: the Respondents conceded in General Counsel's Exhibit 7 that that some employees are owed for sick leave payments. Implicit in those concessions is that the employees have built up their base of 45 days, because otherwise they would not be entitled to any payments. But, in many instances, there is nothing to reflect that other employees had prior employment, and the short backpay period alleged in the specifications, ending sometimes within months, lead me to believe that the employees were not previously employed by the Respondents, were employed for relatively short periods of time, could not have accumulated 45 sick days, and were not entitled to any sick leave benefits. That conclusion is supported by General Counsel's Exhibit 6, in which these employees are listed as employees only for the years in which these short time periods occurred, and in General Counsel's Exhibit 7, in which the Respondents conceded no backpay due for that employee. General Counsel's Exhibit 5 was useful in demonstrating that certain employees worked during years for which the Respondents did not concede that sick pay was due, because that exhibit shows what additional sick days the employees were entitled to take and how many they took, especially for the last years of the backpay period. These employees are, therefore, entitled to sick leave pay for half of the sick days that they did not use in those years.

Furthermore, the Respondents can be liable for no more than one-half of 15 days (120 hours), which is 60 hours, so the most that the Respondents could be liable for each quarter is 15 hours. Under the incorrect underlying basis of the specifications, many quarters were charged for 30 hours; and there are numerous quarters for which the specifications charge 40 hours, and some that charge the Respondents as much as 60 hours. Those charges have been corrected. In doing so, I recognize that what I have done is on my own. The Respondents filed no brief. However, the Board is not in the business of penalizing parties. Its orders are intended to make discriminatees whole for their losses, as if no violation of the National Labor Relations Act had been committed. It is not the function of the Board to order the Respondents to pay money to employees who have no right to such benefits.

Accordingly, I conclude that sick leave benefits are due and owing in half the amounts alleged in the specifications, with the following exceptions:

*Michael Andrews*—The specifications cover three quarters of Andrews' employment, from July 17, 1985, to February 7, 1986, setting forth 40 hours, at \$5 per hour, for each quarter, or \$200 for each quarter. As shown above, no employee was entitled to more than 60 hours of sick pay benefits. The General Counsel has attempted to squeeze into two quarters of 1985 more than Andrews was entitled to for the entire year and two-thirds of his entitlement for the entire year 1986, despite the fact that he was employed a little more than 5 months. Unfortunately, the gross misstatement was part of a pattern repeated throughout the specifications. More importantly, the Respondents do not concede that they owe

anything. He is not listed as an employee, except for this very limited period. There is no proof that he had accumulated any sick days (the requirement is 45) to entitle him to any sick pay benefits, so I conclude that he is entitled to none.

*Walter Baird*—On the basis of the specifications, the General Counsel wants Baird to be paid 160 hours for sick leave pay for 1987, when the agreement permits him to be sick with pay for only 120 hours. The General Counsel also seeks 40 hours' pay for each of the first three quarters in 1988, despite the fact that the backpay period ended on July 18, 1988, just 18 days into the third quarter, when the General Counsel alleges there the Respondents complied with the terms of the expired contract. This claim is like Andrews', because Baird, whose backpay period started on February 16, 1987, shows no prior employment. The Respondents do not concede that they owe anything. There is no proof that he had accumulated any sick days to entitle him to any sick pay benefits, and I conclude that he is entitled to none.

*Gerald Bartok*—Bartok's backpay period started on March 30, 1985. The specifications credit him with 120 hours of sick leave benefits for 1985 (40 hours in each of the last three quarters). Contrary to the treatment of other employees, the specifications ask for nothing for 1986, despite the fact that he was employed until February 7, 1986. The Respondents conceded nothing. He is not listed as an employee, except for this very limited period. There is no proof that he had accumulated any sick days, and I conclude that he is entitled to no sick leave payments.

*Charles Churby*—Churby was employed throughout the backpay period, and he is owed sick pay. However, the third and fourth quarters of 1984 charge the Respondents for 40 hours of sick leave, clearly wrong. Churby had taken 5 days, so all he had left was 10 days, and half of that, on an hourly basis, was 40 hours, or 10 hours each quarter. The proper amount is \$45 for each of these two quarters. The specifications for the following years double the amount Churby was entitled to by using 30 hours per quarter;<sup>4</sup> but in 1988 it returns to 40 hours, which is again inaccurate. For each of the first three quarters of that year, he is entitled to \$75, which is half of 120 hours, divided by four quarters, multiplied by his \$5 hourly wage. His sick leave pay totals \$1131, as follows:

Qtr.	1984	1985	1986	1987	1988
1st		\$54	\$75	\$75	\$75
2d		54	75	75	75
3d	\$45	54	75	75	75
4th	45	54	75	75	

*John Cummings*—The specifications list the last three quarters in 1987 and the first three in 1988 at 40 hours. As noted above, on a yearly basis, the most that an employee can receive is 7-1/2 days, or 60 hours, and the General

<sup>4</sup>Note, however, that the specifications indicate that Churby's pay increased in the middle of 1986, but I have credited him throughout the year with the higher wage rate of \$5, in accord with the Respondents' concession in Exh. 7 that he is owed \$300 for 1986 and 1987.

Counsel wants double this (\$840, at \$3.50 per hour) for Cummings, who appears to have had no employment prior to April 1, 1987, and thus would have no accumulated sick days. I note, however, that the Respondents admitted owing Cummings \$112 for 1987 and \$84 for 1988. For this reason, I will not dismiss his claim, but will honor the Respondents' admission of \$196 due and owing.

**Ronald Durant**—He was sick 1 day in 1985, yet inexplicably the specifications charge 96 hours for that year, and that number has no relation to what the specifications compute for many of the other employees and is not quite double the 56 hours that he is actually owed for 1985, which is the same amount that the Respondents conceded was due, \$294. The General Counsel again seeks to combine in three quarters of 1988 (the third ending on July 18) double the full amount that would be owed for the entire year. I will permit only 15 hours in each quarter, or \$78.75. His sick leave is \$1,160.25, as follows:

Qtr.	1985	1986	1987	1988
1st	\$73.50	\$78.75	\$78.75	\$78.75
2d	73.50	78.75	78.75	78.75
3d	73.50	78.75	78.75	78.75
4th	73.50	78.75	78.75	

**Edgar Fazenbaker**—The specifications credit him with 120 hours of sick leave benefits for 1985 (40 hours) in each of the first three quarters, despite the fact that his backpay period began on January 23, 1985, and ended 7-1/2 months later, on August 2. At most, he would have been entitled to no more than 15 hours for each of those quarters, or \$75 at his \$5 hourly rate of pay; but the Respondents did not concede that he was owed anything. He is not listed as an employee, except for this very limited period. There is no proof that he had accumulated any sick days to entitle him to any sick pay benefits. I conclude that he is entitled to no sick leave payments.

**John Gallagher**—The specifications seek \$300 for each of the last three quarters of 1986, covering a period from May 24 to October 14. Besides the fact that the request far exceeds the amount that the Respondents would owe for even a year, no less than 5 months, from the short backpay period alleged, I find that Gallagher was not employed by the Respondents outside this very limited period. The Respondents' records do not list him for any period other than 1986, and the Respondents do not concede that they owe anything. At most, Gallagher would be entitled to 15 hours each quarter, or \$112.50; but I find no proof that he had accumulated any sick days to entitle him to any sick pay benefits and conclude that he is entitled to none.

**Joseph Gulino**—The Respondents conceded very little sick leave was due to this employee, only \$42 in 1985. But the General Counsel seeks \$600 in 1984, which is collapsed in the last two quarters by alleging 60 hours due, at \$5 per hour. I cannot permit this allegation to stand, because there is no concession by the Respondents of any amounts due for that year. General Counsel's Exhibit 6 shows that Gulino was not employed before 1983, so that it would not be possible for him to accumulate sufficient sick days. Nonetheless,

I will honor the Respondents' admission and conclude that \$42 is due and owing for 1985, noting that Gulino took 4 sick days that year, for which the specifications gave the Respondents no credit.

**Samuel Gulino Jr.**—The General Counsel seeks to combine in the last two quarters of 1984 the Respondents' liability for the full year, and thus charges the Respondents for 44 hours' sick leave in each of those quarters. Gulino had taken 4 days of sick leave, so that left him with 11 days. I will not limit that to 11 hours each quarter, in accord with the formula I have previously used, because the Respondents admitted owing Gulino \$286 for the year, and that is the appropriate amount due and owing, so I will permit 44 hours at \$6.50 per hour for the third and fourth quarters. The amounts for 1985–1987 are doubled and shall be reduced accordingly. The General Counsel seeks to recover double the sick leave liability for 1988, for a period that ended on July 18. The Respondents never conceded that anything was due for that year, and I shall limit the liability to 15 hours for each quarter, at \$6.50 per hour, or \$97.50. The total sick leave is \$1,696.50, as follows:

Qtr.	1984	1985	1986	1987	1988
1st		\$84.50	\$97.50	\$97.50	\$97.50
2d		84.50	97.50	97.50	97.50
3d	\$143	84.50	97.50	97.50	97.50
4th	143	84.50	97.50	97.50	

**Thomas LaClair**—I accept the General Counsel's figures, all of which, on a yearly basis, are exactly double what is owed or what the Respondents conceded in General Counsel's Exhibit 7. Otherwise, I do not agree with the methods the General Counsel used in arriving at these figures. See, for example, the fourth quarter of 1984, which is computed on the basis of 50 hours.

**Michael Mateosky**—The specifications seek \$600 (120 hours at \$5) for the second and third quarters of 1985, covering a period from May 13 to August 2, when he ceased his employment. Besides the fact that the request far exceeds the amount the Respondents would owe for even a year, no less 2-1/2 months, from the backpay period alleged, I find that Mateosky was not employed by the Respondents outside this very limited period. The Respondents' records do not list him for any period other than 1985, and the Respondents do not concede that they owe anything. At most, Mateosky would be entitled to 15 hours for both quarters, or \$75; but I find no proof that he had accumulated any sick days to entitle him to any sick pay benefits and conclude that he is entitled to none.

**Dale Nice**—The specifications seek \$408 (120 hours at \$3.40) for the first quarter of 1986, covering a period from January 6 to April 1, when he ceased his employment. Besides the fact that the request far exceeds the amount that the Respondents would owe for even a year, I find, because he worked for so little time, Nice was not employed by the Respondents outside this very limited period. The Respondents' records do not list him for any period other than 1986, and the Respondents do not concede that they owe anything. At most, Nice would be entitled to 15 hours for the quarter, or

\$51; but I find no proof that he accumulated any sick days to entitle him to any sick pay benefits and conclude that he is entitled to none.

*James Pav*—The General Counsel seeks to combine in the last two quarters of 1984 the Respondents' liability for the full year, and thus charges the Respondents for 60 hours' sick leave in each of those quarters. I will not limit that to 15 hours each quarter, as I have done previously, because the Respondents admitted owing Pav \$201 for each year from 1983 to 1987. The General Counsel's claim of \$204 is based on the erroneous and unsupported allegation that his hourly pay was \$3.40, whereas the exhibits show his pay to be \$3.35. The amounts for 1985–1987 are essentially doubled, because of the miscalculation of the pay rate and shall be reduced to \$201 for each of those years. The General Counsel seeks to recover double the sick leave liability for 1988, for a period that ended on July 18. The Respondents never conceded that anything was due for that year, and I shall limit the liability to 15 hours for each quarter, at \$3.35 per hour, or \$50.25 each quarter. His sick leave is \$904.75, computed as follows:

Qtr.	1984	1985	1986	1987	1988
1st		\$50.25	\$50.25	\$50.25	\$50.25
2d		50.25	50.25	50.25	50.25
3d	\$100.50	50.25	50.25	50.25	50.25
4th	100.50	50.25	50.25	50.25	

*Robert Risha*—The specifications seek \$204 (69 hours at \$3.40) for each of the last two quarters of 1987, covering a 2-month period from August 26 to October 27. Besides the fact that the request far exceeds the amount that the Respondents would owe for even a year, I find that Risha was not employed by the Respondents outside this very limited period. The Respondents' records do not list him for any period other than 1987, and the Respondents do not concede that they owe anything. At most, Risha would be entitled to 15 hours each quarter, or \$51; but I find that he could not have accumulated any sick days to entitle him to any sick pay benefits and I conclude that he is entitled to no sick leave payments.

*Gary Shipley*—The General Counsel seeks the same as Pav, to combine in the last two quarters of 1984, the Respondents' liability for the full year, and thus charges the Respondents for 60 hours' sick leave in each of those quarters. I will not limit that to 15 hours each quarter, as I have done previously, because the Respondents admitted owing Shipley \$210 for 1984 and 1985, and I will grant that amount based on a total of 60 hours each year (half of what the specifications alleged). The General Counsel seeks to recover double the sick leave liability for 1988, for a period that ended on July 18. The Respondents never conceded that anything was due for that year, and I shall limit the liability to 15 hours for each quarter, at \$3.50 per hour, or \$52.50. The total sick leave is \$997.50, as follows:

Qtr.	1984	1985	1986	1987	1988
1st		\$52.50	\$52.50	\$52.50	\$52.50
2d		52.50	52.50	52.50	52.50
3d	\$105	52.50	52.50	52.50	52.50
4th	105	52.50	52.50	52.50	

*Albert Smalley*—The specifications credit him for \$105 for the first quarter of 1986. If he used no sick leave at all that year, he would have been entitled to half of 15 days at \$3.50 per hour or \$420. However, the exhibits show that he used 1 sick day, so that day, or \$28, must be deducted, leaving \$392. Half of that is \$196, and his sick leave benefits for the quarter is only \$49. His total sick leave is \$329, as follows:

Qtr.	1984	1985	1986
1st		\$42	\$49
2d		42	
3d	\$84	42	
4th	84	42	

*Ray Smitley*—Smitley took 5 sick days in 1984, so he had only 10 days left. Yet the specifications credit him for 40 hours in each of the third and fourth quarters of 1984. He is entitled to only 40 hours for the entire year, 10 hours for each quarter. Thus, his sick pay, at \$6.50 per hour, is \$65 for each of those quarters. Yet, the Respondents in Exhibit 7 admit that \$520 is owed, which is 80 hours. That is obviously erroneous, but I will accept half.<sup>5</sup> The record reveals that Smitley took 2 sick days in 1985, and those were not computed into the specifications. Fifteen days, at \$6.50 per hour, are worth \$780, from which must be deducted 2 days, or \$104, leaving \$676. Half of that is \$338. I will accept for the first, second, and fourth quarters sick leave at \$84.50. The specifications have doubled the Respondents' liability for 1986 and 1987. The figures for 1988 for each of the first three quarters are incorrectly computed on the basis of 40 hours for each quarter. The correct amount due is \$105. Smitley's sick leave pay totals \$1653.50, as follows:

Qtr.	1984	1985	1986	1987	1988
1st		\$84.50	\$101.25	\$105	\$105
2d		84.50	101.25	105	105
3d	\$130		101.25	105	105
4th	130	84.50	101.25	105	

*John Thomas*—The specifications are based on a wage rate of \$3.40, but General Counsel's Exhibit 6 shows that Thomas' wage rate was \$3.35; and that is what the specifica-

<sup>5</sup>I make the same ruling concerning the Respondents' concession that \$644 is due for 1986.

tions should be based on. The specifications incorrectly seek to collapse into the last two quarters of 1984 80 hours of sick leave, which would make the total sick leave for the year 160 hours, an inflated figure. The Respondents conceded in General Counsel's Exhibit 7 that \$134 was due. That is a correct figure, based on the accurate wage rate and

40 hours due for the entire year. I will accept that. The 1985 figures fail to account for Thomas' having taken 5 sick days, so all he has left is 10, and he should be paid for half, or 40 hours, through August 16, 1985, or \$33.50 for three quarters.

[Recommended Order omitted from publication.]